

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
NEW OLD MUSIC GROUP, INC.,	:	
	:	
Plaintiff,	:	Docket No. 13 CV 9013
	:	
-against-	:	DECLARATION OF
	:	BRIAN LEVENSON
LUKASZ GOTTWALD, p/k/a DR. LUKE, <i>et. al.</i>	:	
	:	
Defendants.	:	
-----	X	

BRIAN LEVENSON declares that the following statements are true.

1. I am over 18 years of age and I am otherwise competent to testify, and I have personal knowledge of the information contained in this Declaration.
2. I am counsel for Plaintiff in this action. I submit this declaration in opposition to defendants' motion for summary judgment. I also make this declaration to explain the procedural history of this case and submit the exhibits referred to in Plaintiff's memorandum of law.

Procedural History

3. The Complaint in this case was filed on December 13, 2013. Dkt. 1.
4. An Amended Complaint in this case was filed on January 19, 2014. Dkt. 7.
5. On April 4, 2014, the parties submitted a joint scheduling report with competing discovery plans to the Court. Dkt. 20. Plaintiff proposed the case proceed in the normal course with full discovery.
6. Each of the defendants in this case submitted an Answer on April 10, 2014. Dkts. 24-29.

7. On April 18, 2014, a conference was held concerning the parties' competing scheduling reports and discovery plans. Dkt. 21. At the conference the court ordered each party submit a five page letter brief in support of their proposed discovery plan.

8. Defendants' letter brief was submitted on April 28, 2014. Dkt. 32. In their brief, defendants proposed that the case begin with limited expert discovery and that all fact discovery be stayed pending their motion for summary judgment. Dkt. 32.

9. Plaintiff submitted its opposition letter brief to defendants' discovery plan on May 5, 2014. Dkt. 33.

10. Defendants reply brief was submitted on May 12, 2014. Dkt. 34.

11. By Order dated May 14, 2014, the Court adopted defendants' proposal and limited discovery to an initial period in which only expert discovery would be taken, to be followed by defendants' motion for summary judgment. Dkt. 35.

12. By Order dated May 20, 2014, the Court stayed all fact discovery in the case. Dkt. 37. A copy is annexed as Exhibit 1.

Exhibits

13. Annexed hereto as Exhibit 2 is the complete transcript of the deposition of James Payne with Errata Sheet.

14. Annexed hereto as Exhibit 3 is the complete transcript of the deposition of Peter Becker with Errata Sheet.

15. Submitted herewith is a CD containing four recordings referred to in the Payne and Becker declarations. Audio Exhibits 1-4.

16. Audio Exhibit 1 is a copy of the sound recording of Zimba Ku by the artist, Black Heat, from the album Keep on Runnin', recorded in 1975.

17. Audio Exhibit 2 is a copy recording of Price Tag featuring the artist Jessie J from the album Who You Are.

18. Audio Exhibit 3 is a recording of a loop of the drums from the second measure of Zimba Ku created by Plaintiff's expert witness, Peter Becker. Becker Dec., ¶ 36.

19. Audio Exhibit 4 is a recording of a loop of the second measure of Zimba Ku playing the left channel (speaker) and Price Tag playing the right channel (speaker), created by Plaintiff's expert witness, Peter Becker. Becker Dec., ¶ 36.

20. Submitted herewith is a DVD containing three videos, Video Exhibits 1-3.

21. Video Exhibit 1 is a video of Dr. Luke, the producer of Price Tag, giving a presentation at the 2011 ASCAP Expo on his music production techniques, in particular his techniques for "drum programming." I obtained this video from YouTube at http://www.youtube.com/watch?v=d15TvXXd_3Y

22. Video Exhibit 2 is a video of a demonstration of the "nudge" tool used in music production to move sounds forward or backward in time by milliseconds. I obtained this video from YouTube at <http://www.youtube.com/watch?v=qe18TyFYOJA>

23. Video Exhibit 3 is a video of Dr. Luke, the producer of Price Tag, giving a presentation at the 2010 ASCAP Expo on his music production techniques, in particular his techniques for "sampling." I obtained this video from YouTube at <http://www.youtube.com/watch?v=uN11qvXU6fY>

I declare under penalty of perjury that foregoing is true and correct.



Brian Levenson

Executed this 31st day of October, 2014